## GOVERNMENT ORDERS.

*G. 1.* **Rights to trees in Government lands.**—Whatever is affixed or planted in the soil becomes subject to the same rights of property as the soil itself. If a man plants a tree in Government land, the tree becomes the property of Government and the planter has no right thereto or to the produce thereof. A claim to enjoy the produce cannot be maintained by custom. Prescription does not support the claim as it cannot run against the Crown. No claim can be maintained unless there has been a special arrangement or agreement with Government or its officials that the claimant should take the produce. Enjoyment of the produce of trees on Government waste lands by custom or under a lax system of administration does not amount to recognition by Government of a right. The exception in favour of private rights in this section extends to lands set apart for Forest reserves under Section 38. (G. R. No. 6550, dated 3rd November 1881.)

*G. 2.* **Trees in occupied survey nos.**—If the trees grow on land included in an occupied survey number they belong to the occupant. If they grow in the dry beds of streams which are not included within the boundaries of such a number they are to be treated as Government property, unless and until the occupant can establish his claim to them.

In cases where the boundaries of a field are not laid down on the banks of a stream the area of the field as recorded in the survey registers should be taken as the guide in determining how far the right of the occupant extends. The occupant should be allowed the benefit of the trees on the area recorded, all beyond it being held to be the property of Government subject to the provisions of the Land Revenue Code regarding alluvion. (G. R. No. 649, dated 30th January 1882).

*G. 3.* **Special concessions for arboriculture:**—It is desirable that the cultivation of the Babul should be encouraged as largely as possible, and the District Officers should use every endeavour to induce holders of land and other persons to undertake to form Babul plantations on lands suitable for the purpose near the villages. The benefits to be derived from the adoption of this course should be explained to them, and any application for land that may be received should be submitted for the orders of Government, with the recommendation of the District Officer and the Divisional Commissioner. Government will be prepared to grant any reasonable concessions which may be considered necessary in each case ( G. Rs. Nos. 6282, dated 5th August 1884, and 9384, dated 26th November 1884).

*G. 4.* **Of District hereditary Officers.**—The District hereditary officers have no right to trees standing on the lands which they hold for service uncommuted and without proprietary rights. ( G. R. No. 419, dated 17th January 1887 ).

*G. 5.* **Of service Inamdars.**—The holders of service Inam lands have no right to the timber or forest on their lands unless they hold a title deed conferring proprietary rights in express terms. ( G. R. No. 7633, dated 9th November 1887. )

*G. 6.* **Service Inamdars and occupants distinguished or defined.**—The distinction between a holder of service lands and an ordinary occupant is clear. Service tenure is a privileged tenure, and the extent of the alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof. Government can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose. (G. R. No. 5987, dated 6th September 1888.)

*G. 7.* In an alienated village in which the grant of service land was made by Government prior to

## No. 18

*Section*-41—

*Insert* G. 6A on page 84 of the Code :—

"Watandars or service inamdars, except in cases where a summary or other settlement has been applied and the sanads confer on them a proprietory title in clear and unmistakable terms, have no right to the aftergrowth of sandalwood and other reserved trees."

(G.R. No. 7627/24, dated 1-5-1927.)

alienation of the village to the Inamdar, and was thus excluded from Inam to the latter, the right to trees in such service land would undoubtedly vest in Government, while in villages where the service grant was subsequent to the alienation of the village, such right must be considered to vest in the Inamdar. (G. R. No. 7664, dated 17th November 1888.)

*G. 8.* **Trees inside railway fence.**—All trees unless reserved, inside a railway fence are the property of Railway Company. (G. R. No. 237, dated 11th January 1890, and G. R. No. 9313, dated 18th December 1883.)

*G. 9.* **Rules regarding cutting of trees in service lands.**—As regards cutting of trees in service lands the following rules have been sanctioned, in modification of G. R. No. 9578, dated 19th December 1889. *viz* :—

*(a)* Occupants of service holdings may, with the previous permission of the Collector, cut any trees standing in their holdings.

*(b)* The Collector shall not, except for express reasons to be recorded in writing, refuse permission unless the trees be reserved at the Survey or form portion of sacred groves or are roadside or other trees useful to the community and whose destruction would be a public loss.

*(c)* In the case of an application to cut isolated teak or other reserved trees, the Collector may grant them on payment of their estimated value. Where a permission to cut several of such trees is applied for, the application should be disposed of by the Conservator.

Where the Custom is for the land to pass from an occupant to his natural heirs independently of the watandar who actually performs service, the permission should be given; but where the land

passes with the office and the holder enjoys only a temporary usufruct, permission should only be given for good reasons, such as that the trees are ready to fell, damage the crops, or the like. (G. R. No. 6376, dated 9th September 1890).

*G 10.* The formal taking of Survey Nos. for the cultivation of Babul or fruit trees should be encouraged. Applications for lands on special terms should be invited and submitted through the Commisioner for the orders of Government. All Mamledars and other Taluka Officers should be distinctly given to understand that the Commissioner will make a favourable record of efforts to promote arboriculture. (G. R. No. 4118, dated 14th June 1901).

*G 11.* Special concessions have been allowed for planting of trees in open spaces in villages. The form af Sanad which is issued is given as Appendix 3. (G. R. No. 8966 dated 27th December 1901).

*G 12.* **Free grants of timber by Commissioner from waste lands outside Forest.**—The Commissioners of Divisions are empowered to make free grants of timber from Government waste lands outside forests, subject to the same conditions as have been laid down for such grants from forests, provided that the trees are not required for shade or any other public purposes.

G. R. No. 8811 of 4-9-1907.

*G 13.* **Trees in occupied lands in the districts of Kolaba, Thana and Ratnagiri.**—A long press-note on this subject has been issued by Govt. (*Vide* G. N. No. 12060 dated 26th Nov. 1908 on pages 2078-2081 of the Bombay Govt. Gazette Part I dated 3rd December 1908).

*G 14* **Free grants of timber by Collectors.**—Collectors are empowered to make free grants of timber from Govt. waste lands upto the value of Rs. 50 (G. R. 3736 dated 14th June 1909).

*G 15.* **Tree-planting.**—The Govt. of India requested the Bombay Government to take measures for the promotion of arboriculture in the Bombay Presidency (P. W. D. 2289 of 26th October 1910 and 60 dated 13th January 1911).

*G 16.* **Trees in service Inam lands.**—Mamlatdars and Mahalkaris should permit cutting of trees in service Inam lands subject to the usual conditions referred to in G. R. No. 6376 of 9th September 1890. (G. R. No. 5295 dated 1st June 1911, entry 22.)

*G 17.* **Trees in non-service watan lands of District hereditary officers.**—These officers have a right to cut trees in non service watan lands (G. R. 7195 dated 28-7-1911.)

*G 18.* **Concessions to be given to private persons for planting trees.**—With a view to encouraging private persons to plant trees at their own expense in lands set apart for common use of the village, in Govt. unassessed waste, and in reserved forests in charge of the Revenue Department, the Governor in Council is pleased to issue the following instructions :—

(1) Before planting is undertaken, the permission of the Mamlatdar or Mahalkari shall be obtained.

(2) On receipt of an application for permission, the Mamlatdar or Mahalkari shall ascertain by local inquiry whether there is any objection to permission being granted. In cases of doubt, especially when the land is reserved forest, in charge of the Revenue Department or already contains trees of any value which are the property of Govt., the case shall be submitted for the orders of the Sub-Divisional Officer.

(3) In case of permission being granted a permit shall be given to the applicant, stating precisely the extent, situation and boundaries of the land in which he is permitted to plant trees and setting

forth the conditions specified below. No restriction shall be placed on the number or kind of trees to be planted :—

(i) No right over the land shall be granted to the permit holder.

(ii) The permit holder shall be allowed to erect any fence which may be necessary for the purpose of protecting the trees planted by him.

(iii) The usufruct and the timber of the trees, i.e., the leaves, twigs, flowers, fruits and branches of the trees, and the trees themselves when fallen or felled shall be given entirely free to the permit holder.

(iv) Power to remove the trees when necessary, without claim to compensation, shall be reserved to Govt., trees so removed being given free to the permit holder under cl. (iii).

(v) The permit shall be subject to cancellation if the trees are not planted in accordance with the permit within a reasonable time to be fixed in the permit, and thereafter if they are not in the opinion of the Mamlatdar or Mahalkari properly tended and kept. When a permit is cancelled, any trees that may be on the land shall be given to the permit holder under clause (iii) or shall be forfeited to Govt. as the Mamlatdar or Mahalkari shall direct.

All Collectors in the Presidency proper should be requested to give the widest possible publicity to these orders, and utilise every opportunity to induce the villagers to apply for the benefit of the rules.

(Paras 2 & 3 of G. N. No. 5 dated 2nd January 1913, R. D. printed on pages 4 & 5 of the Bombay Govt. Gazette Supplement dated 9th Jan. 1913).

*G 19.* **Trees in service Inam lands.**—Selected Divisional forest officers are empowered to grant permission to cut reserved trees in service Inam lands (G. R. 5651 dated 16th June 1913).

*G 20.* **Trees in Gadkari lands.**—Gadkaris have no right to teak trees in Gadkari lands. (G. R. 9680, dated 9th October 1914).

*G 21.* **Trees**—As regards the suggestion that the word "permit holder" in paragraph 2 of Government Resolution No. 4 dated 2nd January 1913 may be considered to include his heirs also, the Commissioners of Divisions should be requested to state whether (a) the concession granted in the Resolution in question to the permit-holder should not be continued to his successors, (b) if so, whether, to avoid disputes and divided claims, the concession should not be continued only to the eldest son or, in the absence of sons, to the eldest daughter, and (c) if so, whether it would not be desirable to require such heir to apply in order to have the permit continued in his or her name.

(G. R. No. 13000 dated 30th October 1917.)

*J 1.* **Trees in Patil Inam.**—No Civil Court can try suits against Government for trees in Patil Inam land (P. J. 1893, page 186—Appeal No. 41 of 1891.)

[a]**42.** All road-side trees which have been planted and reared by, or under the orders of, or at the expense of Government, and all trees which have been planted and reared at the expense of Local Funds by the side of any road, which vests in Government, vest in Government.[a] But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the

said holder; provided that the trees shall not be lopped except under the orders of the Collector.[b]

[a-a] This was substituted by Bom. IV of 1913, s 12 (*a*), for the original paragraph.

[*b*] Paragraphs 3 and 4 repealed by Bom. IV of 1913, s. 12 (*b*), are omitted.

## SUMMARY (Sec. 42.)

Roadside trees belonging to Govt.
(1) duty of Village Officers ... G 1
Roadside trees belonging to Local Boards ... ... ... ... G 6, 9
Roadside trees planted by land holders in their land ... ... ... ...
(a) cutting and lopping ... G 7, 8
(b) encouragement of ... ... G 4, 9
(c) Preservation of ... ... G 2, 4
(d) Sanads for ... ... G 3, 5

## GOVERNMENT ORDERS.

*G 1.* **Protection of road-side trees.**—It is the duty of village officers to protect Government trees on local and provincial roads without any additional remuneration. (G. R. No. 2731, dated 5th May 1876.)

*G 2.* **Preservation of Road-side trees.**—The propriety of laying down a general law concerning road-side trees planted by landholders in their own land was much discussed by the Select Committee on the Revenue Code Bill. That Bill, as introduced, contained a specific provision on the subject [Section 107, clause (*c*)], but it was much opposed and it has been omitted from Section 42 of the Bill as read a third time and passed on the 15th April 1879.

The only way to prevent such road-side trees being cut down is to apply the provisions of Act

X. of 1870 (now I of 1894) for the acquisition for public purposes either of the trees, or of both, the trees and the land on which they stand. (G. R. No. 3495, dated 3rd July 1879.)

*G 3.* **Road-side trees.**—The Collectors are authorised to give an assurance to persons who will plant trees on the boundary of their fields. A form (R. M. 45) has been prescribed in which the assurance called 'Sanad' is to be given. Under this sanad, the holder and his children are to enjoy the fruit of the trees hereditarily for ever. Govt. have no claim to the fruit, but the tree are the property of Govt. and shall not be cut down or injured by any one. When fields are mortgaged, care is to be taken to enter the name of the owner, and not of the mortgagee, in the sanad. (G. R. 3283 of 26-6-1880, G. R. 4849 of 14-9-1880.)

*G 4.* **Road-side trees.**—The following is the substance of a circular issued by the Commissioner, C. D. to his Collectors :—

Little attention is paid now a days to the planting of roadside trees. The Collectors are requested to make an effort to revive interest in this work. The most suitable system of roadside tree-planting was communicated in G. R. 8428 dated 15th November 1883 and in the instructions issued by the late Mr. Ashburner (Rev. Commr. N. D.) in his circular No. 1253B dated 5th April 1875.

When seedlings or cuttings are planted out, the services of village officers and villagers should be utilised as much as possible in looking after trees and rewards should be given freely. The name of any Mamlatdar or Mahalkari doing special good work in this matter should be brought to the Commissioner's notice.

*G 5.* No occasion will arise for the issue of Sanads by Collectors for planting road-side trees as under orders passed in G. R. P. W. D. No. 309 c. w.—1189—23rd June 1890, the management of

road-side trees on provincial roads has been transferred to the P. W. Department, (G. R. R. D. No. 1037 dated 7th February 1891).

*G 6.* There is no objection to the management of road-side trees on local fund roads in charge of the P. W. D., being transferred to that Department wherever such a course is deemed expedient and the Local Board agrees to it. The transfer may be made under the orders of the Commissioners who will consult the Chief or Superintending Engineer concerned. (G. R. No. 4087 dated 18th June 1898 R. D.)

*G 7.* **Delegation of powers:**—The powers of a Collector under Sections 42, 43, 70 and 156 should be delegated to Mamladars. It does not seem advisable to delegate powers under Section 90. (Serial No. 17 of the statement accompanying G. R. R. D. No. 4347 dated 25th June 1902).

*G 8.* Mamlatdars can permit the cutting and lopping of roadside trees (G. R. 5295 of 1-6-11 (entry 22).

*G 9.* **Roadside trees.**—Govt. have now directed, with a view to encouraging roadside trees planting by private agency, that the planters may be allowed to take the loppings and wood of the trees provided that the trees are not lopped or cut down, without the previous permission of the Collector. The agency to be employed in any district for planting and maintaining trees on Local Fund roads maintained by Public Works Department, shall be subject to the decision of the Commissioner of the Division. G. R. No. A-1970 dated 5th October 1911.

Recovery of value of trees, etc., unauthorizedly appropriated.

**43.** Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove [a] from his holdings [a] any other natural product [a] whether of the like

description or not [a] which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise ; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

(a—a) These words were inserted by Bom. IV of 1905, 1st Sch.

*N 1,* The insertion was intended to make it clear that sect. 43 refers not only to natural products, *ejusden generis* with trees but also to stones etc. (Bill I of 1905).

*G 1.*—The Collector's powers under this section are delegated to Mamlatdars. (G. R. 4347 of 25-6-1902. Entry 17).

*G 2.*—Trees in (a) *Government waste land and*
„ „ (b) *Private lands, reserved by Government.* Section 75 (c) and rule 2 under it, so also sect. 76 or any of the provisions of the Forest Act, were not applicable to the unauthorised cutting of trees in (a). Such cases can be dealt with by the Collector under sect. 43 L.R.C. and prosecutions can be made either under rule 111 under L.R.C. or sect. 379 I.P. Code.

The unauthorised cutting of trees in (b) can be punished under section 75 (c) of the Forest Act and rule 2 under it. The ruling number 49 dated 6-10-1896, (Queen Empress vs. Koya Mavaji) is no bar to such a prosecution. (G. R. No. 3394 dated 25th May 1903).

Regulation of supply of fire-wood and timber for domestic or other purposes.

[a]**44.** In villages or lands in which the rights of Government to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut fire-wood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

[a] As to the local repeal of s. 44, see para. 5 of foot-note [a] on p. 1, *supra*.

## GOVERNMENT ORDERS.

### Free grants of wood from Govt. forests.

*Note 1.* These orders do not apply to Sind. (G.R 1051 of 15-2-1887).

*Note 2.* Grants made under these orders are restricted to the talukas and to the inhabitants of talukas in which there is forest. (G. R. No. 1662 of 2-3-1897).

*Note 3.* If an Inamdar has forest rights his ryots should look to him for free grants. (G. Rs. 3752 of 20-6-1887 and 5688 of 18-8-1887).

## Powers delegated by Government.

| Officers. | Objects and authorities for delegation. | Maximum value in each case of grant. |
|---|---|---|
| 1. Commissioners. | (*a*) The relief of poor people whose houses have been destroyed either by fire or flood. | |
| | (*b*) The construction of dwellings where members of wild tribes or new settlers are too poor to purchase wood. | Rs. 250. |
| | (*c*) Agricultural purposes (such as implements) in cases in which such grants are absolutely necessary. (G.R. No. 1051 of 15-2-1887.) (G.R. No. 21 of 6-1-1903.) (G.R. No. 11221 of 7-12-1912.) | |
| | (*d*) To agricultural labourers or sub-tenants of registered cultivators. (G.R. No. 2614 of 27-3-1885). (G.R. No. 11221 of 7-12-1912). | |
| | (*e*) Sheds for postal runners torches etc. (G.R. No. 4061 of 5-8-1880). (G.R. No. 8812 of 8-11-1884). (G.R. No. 1742 of 23-2-1885). (G.R. No. 11221 of 7-12-1912). | |
| | (*f*) Constructionof huts for poor subordinates of Governmet departments, other than Forest. (G. R. No. 1891 of 18-2-1901). (G. R. No. 11221 of 7-12-1912). | |
| | (*g*) To taluka local boards for improvement of local communication in bridging nallas, watercourses etc. (G. R. No. 1051 of 15-2-1887). (G. R. No. 11221 of 7-12-1912). | Rs. 250. |
| | (*h*) Repairs and construction of village school houses. (G. R. No. 4073 of 31-5-1895). (G. R. No. 11221 of 7-12-1912). | |
| 2. Collectors. (except the Collector of Kanara) After consulting Divisional Forest Officer. | (*a*) to (*h*) as given against No. 1. | Rs. 100. |
| | (*i*) Religious or charitable purposes to village communities, public bodies etc. in their collective capacity provided the trees are not required for shade and that the D. F. O. is consulted beforehand. (G. R. No. 7113 of 31-7-1912). | Rs. 50. |

| | | |
|---|---|---|
| 3. Sub-divisional officer. | (*a*) to (*h*) as given against No. 1. | Authorised to submit direct to D.F.O. recommendations up to Rs. 20. |
| 4. Conservators and Deputy Conservators of forests in charge of circles. | (*a*) To village communities, public bodies, Departments of Government or sections of the communities in their collective capacity. (G. R. No. 8885 of 3-10-1910). | Rs. 1,000. |
| | (*b*) In other cases. | Rs. 500. |
| 5. Deputy Conservators of not less than 10 yrs. service. | (*a*) and (*b*) as given against No. 4. | Rs. 100. |
| 6. Divisional Forest Officers. | (*a*) to (*e*) as given against No. 1. | Rs. 100. |
| | (*f*) Construction of huts for poor subordinates of the Forest department. (G. R. No. 1662 of 2-3-1897). (G. R. No. 11221 of 7-12-1912). | Rs. 100. |

In sanctioning a free grant of timber, the sanctioning officer should fix in each case the time from the date of the communication of sanction to the grantee, for which the grant will hold good, and notice should be given to the grantee of the time so fixed. (G. R. No. 7724 of 5-11-1903).

As regards free-grant of timber from waste lands outside forests see G. R. No. 8811 of 4-9-1907 and G. R. 5736 of 14-6-1909 at G. 12 and G. 14 under section 41.

All land liable to pay revenue unless specially exempted.

**45.** All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

And special exemption may in case of necessity be overruled for a time.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the

## No. 22

*Section* 45—

*Insert* G. 8 :—

"'Mafi Kacha' lands are intended to be used for cultivation or for ancillary purposes e.g. storage of grass, fuel agricultural implements or tethering cattle. So long as these uses prevail the lands should continue to be exempted from assessment. When such lands are used for building or other purposes not connected with agriculture they should be subjected to assessment."

(G.R. No. 141/28, dated 10-10-1930.)

*Insert* G. 9 :—

"The practice of allowing, free of rent, open and temporary user of wada lands in village sites in Ahmedabad District should be continued. If in any case exclusive ownership is claimed or attempt made to erect walls or structures steps should be taken to enforce the rights of Government by levy of occupancy price and rent or by eviction if necessary."

(G.R. No. 3074/28, dated 10-10-1930.)

exigencies of the state may render such levy necessary.

*G. 1* **Liability to pay land revenue.**—All land is liable to the payment of land-revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. (G. R. 4344 dated 18th June 1886.)

*G. 2.* **Limitation.**—There is no rule of limitation, in bar of the right to levy assessment (G. R. 8879 dated 19th August 1915).

*G 3.* **Grant of land for residences connected with religious or educational institutions:**—Copies of the following letter from the Government of India to the Government of Madras are forwarded to the officers concerned for information and guidance.

"I am directed to refer to your letter No. 1416-A.-17-1 dated the 30th August 1917, regarding an application for the alienation of an area of 4.70 acres of land in the village of Mudumarnad in the Karkal taluk of the South Kanara district, in favour of the Vicar for the time being of the Holy Cross Church at Hosabettu, for the construction of a school with a play-ground and garden, a chapel, a cemetery and a residence for the priest in charge. In view of the orders conveyed in Mr. Holme's letter No. 373-128-2 dated the 16th March 1911 the Governor in Council doubts whether he is authorised to permit the assignment of any portion of the land for the purposes of a parochial residence, and asks that the bar imposed by the ruling of 1911 upon grants made partly for residential and partly for religious or educational purposes may be removed; or, if this is not possible, the special sanction may be accorded to the alienation in the present case.

"2. In reply I am to say that the Government of India are averse from grants of land being made specifically for the purposes of a residence apart

from the errection of religious or educational buildings, but they have no objection to a parsonage or a clergy house being built on land which it is proposed to grant for religious or educational purposes when the land to be occupied by the parsonage or similar buildings is an integral part of the land required, as in the present case, and is small in amount both in itself and relatively to the total area involved. Subject to the observance of this general principle, the Government of India leave it to the Government of Madras to sanction such grants at their discretion so long as the total value of the grant is within their power of alienation. I am however to remark that the area of 1.39 acres which it is proposed to devote to the site of the priest's residence in the present case appears to the Government of India to be neither small in amount in itself nor relatively to the total area involved, and I am to suggest that the question of reducing this area should be considered.

(G. R. No. 555, dated 19th January 1918.)

*J. I.* **Strict proof for exemption.**—Strict sroof must be given of any right set up in derogation of the inherent right of the sovereign to assess the land at his discretion; and the facts, that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate or that a very small rent has been paid for many years, do not show that the Government has forfeited its right to enhance the assessment in respect of such lands. (Shapurji Jivanji *vs.* The Collector of Bombay, I. L. R., Bombay, Vol IX, 1885, page 483.)

Liability of alluvial lands to land revenue.

[a] **46.** All alluvial lands, newly-formed islands, or abandoned river-beds which vest, under any law for the time being in force in any holder of alienated land, shall be subject in respect of liability to the payment of land

revenue to the same privileges, conditions, or restrictions as are applicable to the original holding in virtue of which such lands, islands, or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands, or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

[a] As to the local modification of s. 46, see para 5 of footnote [a] on p. 1, *supra*.

## SUMMARY (S. 46.)


Section-meaning of ... ... ... N–2, 3

*Rules* ... ... ... N 1

Alluvial land—

(*a*) artificially formed ... ... G 3

(*b*) meaning of ... ... ... G 2, J3

(*c*) on alienated holdings ... G 1,G 2

(*d*) severed from original holding by sudden flood ... ... G 2, J 3

Submerged land ... ... ... J 1, J 2


## NOTES.

*N 1* rules—Vide

*N 2* This section refers to alluvion formed on alienated lands. Alluvion formed on Government lands is dealt with in sections 63 and 64.

*N 3* When the Land Revenue Code Bill was before the Local Legislature, a bill providing for cases of alluvion, &c., was before the Legislative Council of India and which, if it had been passed into law, would have governed cases falling under this section, but as that bill has been withdrawn there is at present no special law on the subject. Cases falling under this section will, therefore be governed by the ordinary law of the country.

## GOVERNMENTS ORDERS.

*G. I.* **Alluvial lands formed on alienated holdings**—A case recently occured in which some alluvial land was formed, some years ago, close to a survey No. held as personal Inam. The holder of the personal Inam petitioned that the proprietary right to the alluvial land vested in him under Section 46 of the Land Revenue Code, but that it was sold every year by public auction, till the land was given into his possession and requested that in the circumstances stated the money on account of the sale-proceeds of the right, which was credited to Government, might be refunded to him. The case being referred to Government was ordered to be disposed of in accordance with the opinion of the Legal Remembrancer given below:—

"The ordinary law, independent of the Land Revenue Code, is that the riparian proprietor becomes the owner of land gained from a river by gradual accretion; and the applicability of this principle to the Bombay Presidency has been recognized in Nasarwanji Pestonji *vs.* Nasarwanji Darasha (II Bo. H. C. R. 366) ‡ As the petitioner is the Inamdar of the adjoining land, I think he was entitled from the beginning to the possession of the newly-formed land, assuming, of course (as I think may probably be assumed owing to the smallness of its area), that it was formed by accretion and was not transferred bodily from some other holding. The law on the subject is concisely explained in the footnote on page 368 of the volume of the High Court reports above mentioned.

"2. But though I do not think that Government had at any time any legal right to the land, the question of paying over to the petitioner mesne profits involves other considerations. By law he has no claim to them. He has enjoyed the land

‡ Special appeal No. 425 of 1864. *Held* that land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of the occupancy.

since 1882, and any right to previous profits is time-barred. The sum which is claimed is trifling in amount but the principle of refunding money which at the time it was collected, was levied *bonâ fide* under the impression that Government was entitled to it, may if admitted, constitute an inconvenient precedent.

"3. Under the circumstances, I think Government might follow the course laid down in G. R. No. 1110 of 1st March 1878, and merely refund arrears from the date of the earliest discoverable petition, in which the petitioner may have laid claim to this land.

"4. I do not think there is any reason for treating the passing of the Land Revenue Code as the date from which a refund of mesne profits should be sanctioned as that Act does not appear to affect in any way the claimant's title." (G. R. No. 1094, dated 17th February 1888.)

*G. 2.* **The claim to alluvial land.**—The question of a claim to a particular alluvial land was referred to the Remembrancer of Legal Affairs, who reported as follows:—

"The case reported is one in which during a flood in a river soil has been washed up so as to form a considerable area of new land adjoining the Inam land of some Girassias, which was previously on the bank of the river. Such land is alluvial within the meaning of Section 46 and vests under the ordinary law of accession in the Girassias.

"The only exception is that defined by Lord Mackenzie (Roman Law), when, in consequence of a sudden flood in a river, a considerable portion of land clearly distinguishable is forcibly carried off from one estate and added to another, either on the opposite side or lower down the stream, the ground so severed still remains the property of the original owner, provided he asserts his right to it in proper time. When no such exception can be

established the owner of the land which receives the addition is the owner of the accreted land. This is the general law§ which existed before the L. R. Code was passed and which has not been affected by it. Section 46 merely determines the liability of the new land to the payment of land revenue." (G. R. No. 8820, dated 21st December 1891.)

*G. 3.* **Alluvial land artificially formed.**—Such lands artificially formed in the vicinity of Inam lands cannot be granted as Inam (G. R. 8011 dated 25th August 1912)

§ The law at present in force on the subject of alluvial accretions is that contained in Section 46 of the Land Revenue Code. This section, while it lays down the manner of dealing with such accretions so far as their liability to the land-revenue is concerned, does not enter into the question of right to such accretions, but deliberately leaves it to be determined by the "law (if any) for the time being in force." There is at present no such law in existence, and consequently cases of the nature must be determined and disposed of in accordauce with the ordinary law under which, as explained by the Remembrancer of Legal Affairs, "the riparian proprietor becomes the owner of land gained from a river by gradual accretion." This law has now been authoritatively upheld by Government, and all cases of rights to alluvial accretions must hereafter be disposed of in accordance therewith.

It must be observed that the limits of area laid down in this section simply determine the question of liability of alluvial accretion to landrevenue and have nothing to do with the question of right to hold such accretions. Under the section in question as interpreted above, alluvial accretions formed on alienated land not exceeding the limits laid down will be entirely exempt from the payment of land-revenue, while those which exceed that limit will, "in respect of their liability to the payment of land-revenue, be subject to the privileges, conditions or restrictions as are applicable to the original holding" on which such accretions are formed.

Such newly-formed land when found to exist at the time of survey is to be dealt with by the survey officer in the ordinary way, that is, it is to be included in the survey number on which it was formed, unless its area is sufficient to admit of its being made into a separate survey number, and is to be measured, demarcated and classed according to the rules in force applicable to lands of a similar description, its full survey assessment being recorded in the survey papers. In respect of liability to payment of revenue, the land will be subject to the same privileges, conditions or restrictions as are applicable to the original holding. Thus, if original holding be "personal Inam" held under the "summary settlement," the payment of revenue on account of the alluvial land if it exceeds the limit will be regulated according to the terms of that settlement. In the case of the original holding being held on service tenure, the newly-formed land will be subject to payment of full assessment as "Bhar Judi" or "Bhar Akar Salami."

*J. 1.* Where land has been submerged proof of actual possession would apparently be sufficient *prima facie* evidence of possession during the submersions. (Secretary of state *vs.* Krishnamoni Gupta I. L. R. 29 Cal. 575) Mazhar Husain *vs.* Biharisingh I. L. R. 28 All. 760.

*J. 2.* **The right to soil submerged:**—If by the irruption of the waters of a river, tidal or non-tidal a new channel is formed, in the land of a subject although the rights of the crown or of the public may come into existence and be exercised in what had thus become a portion of the river, the right to the soil remains in the owner so that if at any time thereafter the waters shall recede, and the river again change its course, leaving the new channel dry, the soil becomes again the exclusive property of the owner, free from all rights whatsoever, in the Crown or in the public (Thakurain Ritraj *vs.* Thakurain Sarfraj Bom. L. Reporter, VII 1905, page 872.

*J. 3.* **Alluvion defined:**—Alluvion is described by Justinian as an "imperceptible increase and land is said to be *acquired* by alluvion when it is *acquired* "so gradually that one cannot say" how much is added at any particular moment of time. But if by the violence of a river, a portion of land is added to the estate of an adjoining owner," the land continues to be the property of the original owner. Accretion to be considered "gradual" must be by gradual, slow and imperceptible means Narendra *vs.* Achhaibar—I. L. R. XXVIII, Allhabad, 647).

**47.** Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council, to a decrease of assessment if any portion thereof,

Assessment of land revenue in cases of diluvion.

not being less than half an acre in extent, [a] is lost by diluvion [b].

[a] Words repealed by Bom. IV of 1913, s. 13 are omitted.

[b] The paragraph repealed by Bom. IV of 1913, s. 13, is omitted

*G. I.*. Collectors can reduce assessment due to diluvion. (G. R. 1369 dated 4th February 1916).

*J. I.*—When any land is submerged by inroads of a river and is reformed after several years, the owner is entitled to the land as it is not alluvial land giving any right to Government, but where the holder has obtained remission of revenue on account of the submerged area, he may be considered to have abandoned right over it.

(13 Moore's Indian Appeals 467).

Manner of assessment and alteration of assessment.

Prohibition of use of land for certain purposes.

[a] **48.** (*1*) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land.

(*a*) for the purpose of agriculture,

(*b*) for the purpose of building, and

(*c*) for a purpose other than agriculture or building.

(*2*) Where land assessed for use for any purpurpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe in this behalf.

(*3*) Where land held free of assessment on condition of being used for any purpose is used

at any time for any other purpose, it shall be liable to assessment.

(*4*) The collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

[a] This section was substituted by Bom. IV of 1913, s. 14, for the original section.

## SUMMARY (SEC. 48.)

Section 48 (*a*) history, meaning and scope } N 1 to N 12 G 1, 5.

(*b*) rules under } Appendix 4 and *Vide* rules.

1 Altered assessment how and when leviable ... } N 4 to N 14. G 8, 16, 17, 18, 20, 21, J1.

2 Buildings :—

(*a*) before Act I of 1865 in lands assessed to agriculture at a revision survey after this Act ... ... ... G 2, 3,

(*b*) erected after this Act in lands surveyed before it ... G 4, 6, 7,

(*c*) existing in unalienated lands settled after this Act when the area under the building is not excluded from the survey guarantee ... G 11,

(*d*) in Mharki or other service Inam lands ... ... G 9, 10,

(*e*) in house sites or open spaces in village sites ... ... G 13,

(*f*) used as farm buildings in Potkharab ... ... G 14, 19,

(*g*) used for non-agricultural purposes in Potkharab really unarable and therefore unassessed to agriculture ... N 13,

3 Roads—disused in Alienated and unalienated lands ... ... G 15,

4 Salt-works—in Alienated lands ... G. 12.

**Notes under Section 48.**

*N. 1.* **History.**—This section was first based on section 2 clause 1 of Regulation 27 of 1827 and section 25 of Bombay Act 1 of 1865.

*N. 2.* **Original section in 1879.**—The section as originally passed in 1879 was amended by Act 6 of 1901 and replaced by a new section by Act 4 of 1913.

*N. 3.* **Amendments.**—The original section with subsequent amendment and substitution is given below before explaining,

(*a*) Why the changes were made, and

(*b*) How the amended section is connected with sections 52, 61, 65, 66, 102, 103, 106 and 187.

**Original section as it stood in 1879.**

A——." The land revenue leviable under the provisions of this Act shall be chargeable :

(*a*) upon land appropriated for purpose of agriculture ;

(*b*) upon land from which any other profit or advantage than that ordinarily acquired by agriculture is derived ;

(*c*) upon land appripriated for building sites.

And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall be liable to be altered and

fixed at a different rate when such land is appropriated for any other purpose, notwithstanding that the term, if any, for which such assessmet was fixed may not have expired.——A.

And any land allowed by Government to be held free of assessment on condition of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

It shall also be lawful for the Collector or for a Survey Officer, subject to rules or orders made in this behalf under section 214, to prohibit the appropriation of any unalienated land liable to the payment of land revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes."

In the amendment made in 1901, the section practically remained the same, except the addition of the following clause after the letters A——A.

"By such authority and subject to such rules as to the fixing and periodical revision thereof as the Governor in Council prescribes in this behalf."

In 1913, in addition to some verbal alterations, the principal change was the substitution of the word "used" for the word "appropriated."

*N 4.* **Objects of amendments.**—The objects of the amendments in 1901 were,

(*a*) to specify the authority by whom altered assessment may be fixed, and

(*b*) to fix such assessment for a specified period and to revise it at the end of that period.

*N. 5.* The substitution of the word "used" for the word "appropriated" in 1913 was necessitated by a ruling of the Bombay High Court (I. L. R. 34–Bombay 239), which held that the word "oppropriated implied something more than temporary use, and that therefore altered assssment could not be fixed for stacking timber in agricultural land in

the fair season only. The word nsed was therefore substituted, as it includes both temporary and permanent uses. Before this ruling, it had been actually the practice for revenue officers to interpret the word "appropriated" as including both temporary and permanent uses. The discussion in the Legislative Council at the time of introducing the change of wording shows that Government did not intend to alter the assessment if the temporary diversion of agricultural land to a non-agricultural purpose (e.g. a cultivator building a plague hut in his field), was not made for the purpose of profit.

*N. 6.* **Connection with other sections.**—The section does not apply to trespassers on Government land, to whom section 61 applies.

*N. 7.* The section does not apply also where the land revenue to be altered for an altered purpose is not assessed after 17th July 1879, on which date this Act came into force.

*N 8.* The words "the land revenue leviable under the provisions of *this* Act" in clause 1 and words "the assessment fixed under the provisions of *this* Act" in clause 2 should be specially noted.

*N 9.* **Concrete case:**—In 1870 the original Survey Settlement was introduced into a village in class I. At this settlement A's field measuring 20 acres was assessed at Rs. 10. In 1885 A unauthorisedly built a factory for non-agricultural purposes on an area measuring 3 acres with a proportionate assessment of Rs. 3. The factory remained undetected by the Collector till the revision survey, say, in 1890. As the assessment of Rs. 3 was not fixed after 17th July 1879 (after *this* act came into force) it is not liable to be altered to building assessment of Rs. 30 in the Collector's descretion until the revision survey is introduced in 1890. After the discovery of the factory in the field in 1890 the Collector could of course recover only the penalty under section 66 to which A became liable in 1885 at any time within

60 years from the year in which the liability first arose. (Vide section 187 and the Limitation Act, IX of 1908, schedule I, article 149).

At this revision survey again, the factory could escape building assessment if none of the following 4 conditions existed :—

(1). The area of 3 acres under the factory should be excluded from the operations of the revision survey.

or,

(2). If not so excluded the area must have been separately demarcated and specially assessed to building rates under this section at the revision survey.

or,

(3). There ought to be a clause in the notice under section 103 that the revised assessment say of Rs. 6 on the 3 acres (supposing that the original Rs. 10 was raised to Rs. 20 at the revision survey) was subject to modification when the Governor in Council would subsequently publish a declaration under the latter part of Section 102 (and in accordance with this clause in the notice the agricultural assessment on 3 acres has actually been modified to, say, Rs. 60 in the subsequent declaration).

(4). In the absence of such special modification the declaration under Section 102 should at least be so worded that the assessments fixed by survey officers related to lands which on the date of the declaration were *actually* used for the purposes of agriculture alone ; (so that even if a survey officer has wrongly fixed the agricultural assessment of Rs. 6 on the area covered by the factory, the declaration would not apply to such wrong assessment, which can be cancelled and replaced by a building assessment of, say, Rs. 60.)

*N 10.* If conditions (1) and (2) were not observed at the revision survey in 1890, conditions (3) and (4) also could not have existed in that year as explained below :—

(*a*) Paragraph 1 of the form of Notification in Appendix J under Section 103 originally stood as follows :—

"The survey rates as fixed under this settlement will remain in force *without increase for a period of 30 years* commencing from 1890-91 and extending to 1919-20."

This wording did not give a notice to the ryots about any probable modification in any of the assessments at the time of publishing a subsequent declaration under the latter part of Section 102 and therefore that declaration could not make any modification in the assessment of Rs. 6 in this case.

(*b*) The wording in Appendix J was changed as follows by Government Notification No. 2828 dated 10th April 1895 published on page 457 of the Bombay Government Gazette Part 1 dated 11-4-1895 :—

"The Governor in Council having been pleased to sanction the assessments fixed by the Superintendent of Revenue survey and assessment under the provisions of the Bombay Land Revenue Code, 1879, the said assessments will henceforth be leviable, subject however to such declaration as the Governor in Council under Section 102 of the said Code may hereafter be pleased to make for the purpose of declaring (a) any of (a) such assessments, *with any modifications* which he may deem necessary, fixed for a term of years."

(The words between (a)—(a) were inserted when the rules were revised and published with G N. No. 5223 dated 28-6-1905.)

(*c*) Thus till a survey settlement after 10th April 1895, the Governor in Council had no

door open for specifying any modification of the revised assessment of Rs. 6 in this case in his declaration under Section 102.

(*d*) As regards condition 4, the following form of declaration was first sanctioned by G. R. No. 4267 dated 29–5–1896.—" Whereas Government have sanctioned the assessments fixed by the officer in charge of survey, in the case of (a) such (a) lands (b) as are now *actually* (b) used for the purpose of agriculture alone (c) and in the case of unoccupied cultivable lands (c) within the area hereinbelow mentioned &c. &c. now in exercise of the powers conferred by Section 102 of the said Code, His Evcellency the Governor in Council is pleased to declare the said assessments with the modifications hereinafter specified in respect thereof, fixed for a term of years."

(The words between (a)—(a); (b)—(b), (c)—(c) were principally inserted by G. R. No. 4582 dated 16–6–1904.)

(*e*) Thus, till a survey settlement after 29–5–1896 on which date G. R. 4267 was passed, the declaration under Section 102 was not expressly limited to lands used for agriculture alone. Therefore condition 4 also did not apply to the area under the factory in 1890 and it could not be assessed until the second revision survey in 1920. In that year, even if conditions 1, 2, and 3 are not observed, the clear wording of the declaration in condition 4 will apply and although the survey officer may have instead of omitting the 3 acres from the second revision actually assessed them to revised agricultural assessment say, Rs. 9, the wrong assessment will not come under the declaration, and even if the Collector has actually received this wrong assessment till say, 1930 he can, in his discretion

under Section 52, substitute Rs. 90 as building assessment from the year 1931, but not retrospectively from 1920 (G. R. No. 2156 of 7-3-1910 and 2514 of 3-10-1916.)

*N 11.* Now suppose that in A's village the original survey took place in 1880 instead of in 1870. This will bring A's act in 1885 under Section 48, because, the 3 acres under the factory came to be assessed after this Act came into force and consequently, A was liable to altered assessment, say, of Rs. 30 from 1885 till the revision survey in 1890 and the Collector could recover it at any future time of discovery, provided the interval between the liability and actual levy is not more than 60 years.

*N 12.* Again, suppose that the second revision survey is postponed for some reason or other for 10 years after 1920. Then the question arises whether in 1925 the Collector can impose altered assessment on the factory without waiting for the second revision survey on the ground that the guarantee of 30 years of the 1st revision survey of of 1890 expired in 1920 and that therefore he was at liberty to impose building assessment at any time after 1920. The answer to this question is in the negative for the following reasons :—

(1) There cannot be any Interim settlement (L. R.'s opinion accompanying G. R. No. 784 dated 3rd February 1892.)

(2) The guarantee of the former settlement after its expiry must be considered as current till the introduction of the next settlement (vide Bombay High Court Ruling in appeal No. 98 of 1905 from original decree in the case of the Secretary of State *Vs.* Sadashiv Bhat and 3 others, circulated with G. R. R. D. No. 1327 dated 7-2-1912).

*N 13.* As regards G. 15, although a sheet of rock in a survey No. is not assessed for agriculture, it will

be assessed to building if a building for non-agricultural purposes is erected thereon under s. 65.

*N 14.* As regards determining special assessments under this section see table given in Appendix 4.

## GOVERNMENT ORDERS.

*G 1.* **The proper scope of the Section.**—Section 48 contemplates the case of a holder of land set apart for one purpose appropriating such land to another purpose, for instance, a rayat turning his field into a quarry or a building site. It was not intended to meet the case of trespassers or encroachers, or unauthorized occupation. (G. R. No. 172, dated 12th January 1880.)

*G 2.* **Treatment at the revision survey of appropriations effected before 1865.**—In cases in which portions of lands assessed for agricultural purposes only have, prior to the passing of Bombay Act I of 1865, been appropriated for building or other non-agricultural purposes, such portions should at the first revision survey be separately demarcated (by analogy with Section 116 of the Code) and specially assessed under Section 48 (*c*) of the Code. (G. R. No. 205, dated 9th January 1885.)

*G 3.* It would obviously involve much expense and inconvenience to separately demarcate and assess in accordance with G. R. No. 205, dated 9th January 1885, minute plots of land which have been used for constructing huts, temples, tombs and raised platforms surrounding trees, &c. There may, however, be cases, such as a large building in the vicinity of an important town, where it would be expedient to act on the principle approved in the above Resolution. The Survey and Settlement Commissioner is given a discretionary power either to carry out the principle approved in the Government Resolution above quoted or to apply the "Pot Kharab" Rules to such appropriations according to the circumstances of each case. (G. R. No. 3942, dated 16th May 1885.)

*G 4.* **Extent of para. 2 of Section 48 read with Section 112.**—Section 112 of the Code enacts that "existing survey settlements of land revenue* * * shall be and are hereby declared to be in force subject to the provisions of this Act". As regards the question whether this enactment subjects assessments fixed in any such "existing survey settlements" to the provisions of paragraph 2 of Section 48 of the Code, it has to be observed that that paragraph applies in terms only to any "assessment fixed under the provisions of this Act." Assessments fixed in "existing survey and settlements" were not fixed, "under the provisions of this Act," and as Section 112 does not say that they are to be deemed to have been so fixed, but merely declares that existing survey settlements are in force subject to the provisions of this Act, it appears reasonable to conclude that this latter enactment was not intended to embrace any such provisions as that of paragraph 2 of Section 48, but only to such provisions of the Code as are general in their terms. Any other reading of Section 112 would deprive the words "fixed under the provisions of this Act" in paragraph 2 of Section 48 of their meaning and give to that paragraph a retrospective operation. There is a strong authority against thus interpreting the intention of the legislature. (G. R. No. 10196, dated 19th Decembr 1885.)

*G 5.* Under sections 45 and 48 *all* land is liable to the payment of land-revenue no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. (G. R. No. 4344, dated 18th June 1886.)

*G 6.* Paragraph 2 of Section 48 does not apply to lands assessed under a survey settlement fixed before the date of the Land Revenue Code. The words of the paragraph "the assessment fixed under the provisions of the Act" are specific, and Section 112, declaring existing settlements "to be in force subject to the provisions of this Act," does

not make the assessment fixed under such existing settlements an assessment fixed under the provisions of the Land Revenue Code. It cannot be considered that the assessment under the existing settlement was fixed under an order or notification, which by virtue of Section 2 is to be deemed to have been made under the Land Revenue Code, as in that case Section 112 would seem to be surplusage. Legislation will be required, therefore, if paragraph 2 of Section 48 is to be made applicable to assessments fixed under earlier survey settlements, *i. e.*, those introduced prior to the passing of the Code. It is doubtful how far such legislation would be justifiable, having regard to the difference between Section 35 of Bombay Act I, of 1865 and paragraph 2 of this Section with reference to the rate of assessment which may be levied in such a case. (G. R. No. 4758, dated 3rd July 1886.)

*G.* 7. **Lands settled before the Code not liable to altered assessment.** In all cases in which unalienated land (settled before the land Revenue Code came into force) is appropriated to any purpose unconnected with agriculture, a fine under Section 65 can only be levied, but no revised assessment under Section 48 which can be only imposed in the case of land settled under the Code. The procedure to be observed in cases of such appropriation of land settled before the Land Revenue Code came into force should, therefore, be to recover the fine only. (G. R. No. 6306, dated 19th September 1887.)

*G.* 8. *Vide* G. R. No. 6035, dated 25th August 1890, printed under Section 66.

*G.* 9. **Appropriation of Mharki Inam Land.**—In a case in which a company applied for permission to appropriate a (Mharki) watan land for building purposes, the question raised was whether, if the application was granted, the land appropriated for building purposes would be liable to altered assessment under paragraph 2 of Section 48 of the

Land Revenue Code and to a fine under Section 65 of the Code. This question has been disposed of by the following orders :—

"Watan land is alienated land within the meaning of Clause 19 of Section 3 of the Bombay Land Revenue Code. Section 65 of the Code, which refers to procedure on appropriation to non-agricultural purposes by an occupant, *i.e.*, holder of unalienated land, is therefore inapplicable in the case of service lands such as the Mharki (uncommuted service) land in question.

"Nor can the land in question be subjected to any assessment under Section 48. It is not 'land allowed by Government free of assessment on condition of its being appropriated to one purpose' (that is, to some one specific purpose) within the meaning of that section. Service lands have not been granted revenue free on such condition. The holders of such lands are not restricted by the terms of grants to making any particular use of them. They hold them free of all assessment on condition of rendering service to Government, the profit, which they can get out of their lands by whatever use they choose to put them to, standing for the remuneration of their service." (G. R. No. 3012, dated 1st May 1891, and G. R. No. 5115, dated 25th July 1891.)

*G. 10.* The holders of service Inam lands, such as Mharki, which are not such as are allowed by Government, to be held free of assessment, on condition of their being appropriated to one purpose (*i. e.*, to some one specific purpose) can appropriate them to any purpose without any sanction and without being liable to pay any extra assessment so long as they keep the lands in their possession and guard gainst such alienations of it as will conflict with the provisions of the Hereditary Offices Act [cancels G. R. No. 5517, dated 4th August 1886. (G. R. No. 3411, dated 11th May 1893.)]

*G. 11.* **Assessment guaranteed not liable to be altered.**—An assessment fixed at a revision survey on land after its conversion from agricultural to building purposes, cannot be enhanced until the term of years fixed for such assessment under Section 102 of the Land Revenue Code, 1879, has expired. Section 102 provides that it shall be lawful for the Governor in Council to declare assessments fixed for certain periods, and Section 106 provides that a fresh survey may be directed, but no enhancement of assessment shall take effect till the expiration of the period fixed under Section 102. The assessment so fixed can only be enhanced if the purpose for which the land is held is changed after the assessment is fixed; in that event the assessment is liable to be altered under Section 48, but there is no other provision in the Act allowing an assessment once fixed to be enhanced. Therefore, if lands have been assessed, even by mistake, as appropriated for agriculture, when they might have been assessed as lands appropriated for building sites, the assessment cannot be enhanced until the period fixed for the assessment has expired. In future the assessment of land applied to non-agricultural purposes should be left to the Collector, on receipt of information from Survey Department and the guarantee might be given for such period. (G. R. No. 5344, dated 25th July 1893.)

*G. 12.* **No assessment to be imposed on alienated lands used for salt works.**—In the case of alienated lands no extra sum (apart from the quit rent, Judi, Salami, &c) could be levied as assessment for the privilege of using the lands for salt works, unless there was a stipulation in the grant that the land was granted for a particular purpose which was not that of making salt. (G. R. No. 4956, dated 2nd August 1898.)

*G. 13.* **The test for levying assessment.**—The criterion whether any house site or open space

(when appropriated to non-agricultural purpose) should be assessed or not is whether it is held by the present occupant prior to British possession or in recent years. If the former the land is exempt, if the latter it should be assessed. (G. R. No. 3476, dated 2nd June 1900.)

*G. 14.* **No assessment for farm buildings or potkharab.**—Under Section 65, the occupant of agricultural land is entitled to erect farm-buildings. Imposition of agricultural assessment on land which was treated as potkharab in the last settlement and on which farm buildings have since been erected is erroneous. (G. R. R. D. No. 2329, dated 18th March 1905).

*G. 15.* **Pot-Kharab or bad land included in the periphery of a Survey Number.**—When portions of land, such as

(1) Deep pits.

(2) Water-courses, scoured out by streams.

(3) Rock out-crops.

are unfit for cultivation, they are deducted as uncultivable and the holder may bring it under cultivation without liability to any charge because it is assumed that such cultivation can only be effected by the expenditure of money, as for instance in Ratnagiri where, upon sheets of rock, walls are built and earth is piled up until the rock becomes a rice field. Such unarable lands though brought under cultivation, are to be left unassessed hereafter (Para 16 of G. R. R. D. No. 2619 of 26-3-1884.)

2. There is, however, a quite different class of land exempted from assessment which though called unarable is, however, perfectly arable; for instance, a cart road not metalled for village use across a field of good deep soil. The strip of the road is shown as Pot-Kharab in the map not because it is uncultivable but because it is withdrawn from cultivation and assigned for a road.

3. If this road is no longer needed as such by any one, the question is whether during the currency of the existing settlement the holder of the field can cultivate this disused road with any charge or revision of assessment,

if (a) the land is unalienated

or

(b) it is alienated.

4. As regards (a) the Survey Department expressly distinguished between strictly unarable land and land which was prohibited under Section 48 (4) because though arable, it was used for roads, tanks etc.

As regards (b) such expressed distinction between the two kinds of Pot-Kharab was not made by the Survey Department.

5. Assessment should be levied in every such case of unalienated lands. In the case of alienated land it should be levied when it is possible to make sure from the survey papers that exemption originally accorded was granted on the ground that the land was to be applied to use as a road or for any other definite purpose. (G. R. R. D. No. 3908 of 10-4-1916.)

*G. 16.* **Levy of Revised Assessment in respect of certain lands at Viramgam used for non-agricultural purposes.**—In paragraph 3 of his letter the Collector remarks that as in certain cases the assessment was erroneously revised as if the land was agricultural land and the revised assessment was guaranteed for thirty years, the assessment cannot be revised till the expiry of the period of guarantee. The Collector's attention should be invited to paragraph 1 of G. R. No. 2156 dated 7th March 1910, in which Government have ruled that the proceedings of a settlement officer purporting to raise the agricultural assessment of land, which at the time of the survey operations was not agricultural land but had paid its fine or premium for

conversion to building purposes and had been actually converted into building land, are of no effect and that when building sites have been wrongly assessed by the settlement officer as agricultural lands at the time of the revision settlement and the revised agricultural assessment has been recovered for a number of years, the revised building assessments subsequently fixed by the Collector should be levied from the year in which they are fixed and not from any previous year. It would therefore be open to the Collector to propose revision of the assessment levied in similar cases in future. (Paragraph 3 of G. O. No. 9514 R. D. dated 3rd October 1916).

*G. 17.* Altered assessment on land diverted from one non-agricultural use to another-Exemption from payment of altered assessment can only be allowed for the portion of a family grave yard at Ankleshwar actually used as such, and that only if the portion is demarcated from the rest of the survey number, but that, as the whole survey number has been let out for storing timber on rent by the family members, exemption from the payment of altered assessment even on that portion cannot be allowed. (G.M.R.D. No. 9833 dated 13th October 1916.)

*G. 18.* Land used for setting up grass-pressing machines, or for storage of grass bales, timber or bricks, or for any of the numerous varieties of non-agricultural use other than building, is liable to be assessed by the Collector with reference to the situation, facilities and profits, or in other words, the increment value of the plot. The levy of the non-agricultural assessment in such cases is however a matter for the Collector's discretion. (G.R. 11437 of 24 November 1916)

*G. 19.* **Potkharab**—(1) Some potkharab land occupied by buildings was included in an agricultural survey number at the

revision survey as it had been at the original survey and was not taken into account in fixing the agricultural assessment at the revision survey, on the ground that it was occupied by buildings. It was never converted to any other purpose than that for which it was used when it was deliberately, excluded from agricultural assessment at successive settlements. As the Settlement Officer dealt with the question of its assessment by including it as potkharab in an agricultural survey number it became entitled to the benefit of the guarantee given under Section 102 of the Land Revenue Code even though that guarantee was confined to lands actually used for the purpose of agriculture (G. R. R. D. No. 11023, dated 15th November 1909).

(2) At the next settlement such lands should be expressly excluded from the guarantee. When the land which has been treated as Potkharab because of the nature of the soil, is converted to a non-agricultural use or when having been treated as Potkharab because of a particular non-agricultural use, it is converted to another non-agricultural use, it becomes liable to assessment from the year in which it is fixed by the Collector on the analogy of the orders in G. R. No. 2156 dated 7th March 1910.

(G. R. 10438 of 27th August 1917.)

*G. 20* **Municipality.**—A municipality is liable to pay altered assessment in respect of agricultural lands given by it for building purposes.

(G. R. R. D. 13088 dated 1st November 1917.)

*G 21.* **Watersupply and drainage.**—Land used for water and drainage works by a municipality cannot be considered to be 'land yielding no return' and has no claim to exemption from assessment to land-revenue.

(G. R. R. D. 15191 dated 15th December 1917.)

*J. 1.* **Substantial buildings in place of brick kilns.**—On conversion of his land from agricultural to non-agricultural uses by establishing a brick-kiln in 1872, the plaintiff was called upon by the Collector to pay thirty times the assessment as fine for the conversion under section 35 of Bombay Act I of 1865. About that time or shortly afterwards the plaintiff erected some huts on the land as accessories to the trade of a potter. At the Revision Survey, which took place in 1889, the land was assessed as agricultural land. Sometime between 1897 and 1901 the plaintiff erected substantial buildings called chawls on the land and let them out to tenants. These chawls occupied 597 square yards and left 522 square yards of land for the brick-kiln. The Collector thereupon levied enhanced assessment on the whole land measuring 597 plus 522 square yards at the rate of Rs. 85 per year for the years 1901 to 1911; and recovered it on the 13th August 1912.

Held that no enhanced assessment could be levied upon 522 square yards, but as regards 597 square yards, the Collector rightly levied enhanced assessment for conversion of the land from a brick-kiln to substantial buildings after the introduction of the revised settlement in 1889. There was no difficulty in levying this enhanced assessment although, at the introduction of the revised settlement of 1889, the land was in fact assessed to agriculture instead of to brick-kilns. (Mahmadbhai vs. Secretary of State, 20 Bombay Law Reporter 22)

*Section* 48—

*Insert* G. 30 :—

"With a view to preserving Government interests, a nominal rent of one anna per pole per annum should be levied from telephone companies for telephone poles erected on Government land."

(G.R. No. 9598/24, dated 14-3-1929.)

"In the case of poles and towers erected on Government land by the Tata Power Company for electric transmission Government directed the levy of rent at one anna per pole and four annas per tower."

(G.R. No. 7032/28, dated 11-11-1931.)

**49.** When it has been customary to levy any special or extra cess, fine, or tax, however designated, from any holder of land, which, though nominally wholly or partially exempt from the payment of land revenue, has by the exaction of such cess, fine, or tax been indirectly taxed to the State, Commuted assessment of land indirectly taxed to the State.

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated, And of land liable to occasional assessment.

the said assessment, cess, fine, or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine, or tax for which it is substituted and shall not be in excess of the assessment to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

## SUMMARY. (s. 49.)

Section 49—Meaning ... ... ... N 1

Mamul Judi—fixed old—may fall to the level of the survey assessment only so long as the latter is less than the old fixed amount ... ... ... ... G 1

Scale Judi—on Patelki or Kulkarni Inam-lands never to exceed the survey assessment ... ... ... ... G 5

Settlement judi on

(a) Personal Inam land need not be reduced as of right... ... G 2, 3, 6

(b) Ditto Dewasthan lands ... G 5

(c) Ditto on non-service watan lands of Dist. hereditary officers ... ... ... ... G 5

(d) Non-service watan lands of useless village servants not to be varied at revision survey but may be reduced in special cases ... G 4

(e) Lands for service useful to the community ... ... ... G 6

*Note 1.* This section is based on clause I of section 4 and clause I of section 5 of Bombay Act VII of 1863 relating to the commutation of cesses, taxes *etc.* and occasional assessments that were formerly levied on lands wholly or partially exempt from payment of land revenue in the Guzrath Districts including Panch Mahals. This commutation is effected either at the time of survey or thereafter by the survey officers or by the Collector in accordance with the orders issued by Govt. in this behalf. The commutation assessment thus fixed is imposed as Judi on the alienated lands which were previously subject to such ceses or occasional assessments. The correspondence and orders on the subject will be found in Govt. Selection No. 114 ( new series) and Govt. Selections containing survey settlement reports of the different Talukas in which these cesses &c. were levied. The "occasional assessment" means an assessment levied occasionally or under particular circumstances e.g. when the holder pays assessment only when it is cultivated, or when it is irrigated, or when cultivated with particular crops etc. (B.G.G Part V 1877 page 76 and Select Committee's report para 16.)

*G. 1.* **Mamul Judi on Inam lands** :—Although the Judi on Inam lands is fixed by a sanad, the amount of Judi actually levied on such lands can never be in excess of the assessment to which the lands would be ordinarily subject if unalienated. Thus if the assessment is less than the fixed Judi the amount of Judi levied must be equal to such assessment, while if at a future revision the assessment is enhanced up to or in excess of the amount of Judi, Government is entitled to levy the full amount thereof. (G.R. No. 8391, dated 30th November 1882.)

*G. 2.* Apparently the opinion in G. R. No. 8391 of 30th November 1882 has reference not to the quit rent payable under the summary settlement Act but to the Judi, Salami or other quit rent or land tax "already paid to Government." Under section 6, rule 3 of Act VII of 1863, the quit rent is calculated at one-eighth of the assessment minus any sum which irrespective of the settlement was payable to Government. This quit rent could not be affected by revision but if the sum which was payable irrespective of the summary settlement had been imposed under section 5 of Act VII of 1863 (repealed by V of 1879 and replaced by section 49) as a *commuted assessment*, such commuted assessment could not be in excess of the assessment to which the land would ordinarily be subject, if no right to exemption existed in respect thereof. . . . . Though revision assessment would affect commuted assessment, it would not affect in any way the quit rent under section 6. Such quit rent cannot be reduced to the level of revised assessment under any provision of the law. It is competent to Government to allow such revision as a matter of grace and cannot be claimed as a matter of right. (G. R. No. 4733, dated 3rd July 1889.)

*G. 3.* It is unnecessary to alter Judi permanently fixed under Bombay Act 2 of 1863 in cases where the original assessment included patasthal assess-

ment in a tract or place where the latter is to be abolished. (G. R. No. 136, dated 7th January 1909).

*G. 4.* **Judi on Service Inam lands:**—The Judi fixed on lands which originally belonged to useless village servants should not be varied at a revision settlement. But if the Judi exceeds the reduced assessment and the land is irrigated land the Judi should be reduced to eight annas in the rupee of the Jirayat assessment. (G. R. R. D. No. 571, dated 19th January 1909).

*G. 5.* When water rate on Patilki or kulkarni land is abolished, the scale Judi on such land should be reduced to the level of the remaining assessment. But in similar cases of Dewasthan and non-service watan lands of Dist. hereditary officers, the Judi need not be reduced. (G. R. No. 2858 of 13 March 1916).

*G. 6.* Certain Jat-Inam lands and lands of villagers useful to the community were jirait at the time when the judi on them was fixed. They were classed as Bagait at the time of the Revision settlement. Water rates were newly fixed on them and were added to the amount of the judi as originally fixed, the whole amount being treated as judi and levied every year. When the new water rates were abolished the judi was reduced to the original amount.

Other Jat-inam lands were Bagait at the time when the judi on them was fixed and the water rate had been taken into account in calculating the judi. When the water rates were abolished the judi was, on the analogy of G. R. No. 1860 of 27th February 1914, brought to the level of the assessment that has remained after the abolition of the water rates. (G. O. R. D. No. 10498 dated 2nd November 1916).

**50.** Whenever any such cess, fine, or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

Superior holder may recover commuted assessment from inferior holder.

*N 1.* The description of the various cesses, taxes &c and of the occasional assessments which were levied on land in Gujrath will be found in Mr. Peile's report no. 3 dated 11th April 1863 printed at pages 484 to 557 of Government selection CXIV ( new series ).

**51.** When it has been customary to levy a larger revenue under the name of "*veta*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

Excess of assessment may be laid on land in adequately assessed held with it

*N. 1.* There was a tenure called 'chali' in the Karnatic districts like 'veta' in Gujrath. It has been dealt with on the same principles at a survey settlement.

[a] **52.** On all lands which are not wholly exempt from the payment of land revenue, and [b] on which the assessment has not been fixed under the provisions of section 102 or 106 the assessment of the amount to be paid as land revenue shall, subject to rules [c] made in this

Assessment by whom to be fixed.

behalf under section 214, be fixed at the discretion of the Collector, for such period as he may, [c] be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands :

Proviso. Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights [d].

[a] This section was substituted by Bom. VI of 1901, s. 4, for the original section.

[b] "And" was substituted for "or" by Bom. IV of 1905, 1st Sch.

[c] Words repealed by Bom. IV of 1913, s. 15, are omitted.

[d] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. VI of 1901, s. 5.

## SUMMARY (s. 52).


| | |
|---|---|
| Section 52—meaning and scope ... | N 1, J 1 |
| Rules... ... ... | N 2, G 4 |
| Prescriptive right— | |
| (a) in Panch Mahals ... ... | G 2 |
| (b) in village sites ... ... ... | G 3 |
| Words—meaning of the word 'नेहेमी' used in documents issued by the Maratha Government ... | G 1 |


## NOTES

*N. 1.* This Section was substituted for the original Section 52 by Bombay VI of 1901, Section 4. The amended Section 52 gives authority to the Collector to assess unoccupied and unalienated

lands which were within the operation of an order under Section 95 but which were left unassessed at the settlement. (paragraph 8 of statement of objects and reasons of Bill IV of 1901).

*N. 2.* Rules—*Vide.*

## GOVERNMENT ORDERS.

*G. 1*—The word नेहेमी used in documents issued by the Maratha Government expresses merely that the terms of the grant were not subject to annual revision. No guarantee is thereby given against alteration when general revision of the land assessment or a general revision of such grants is determined on. (G. R. 3773 dated 30th September 1864 and 1637 dated 20th April 1865.)

*G. 2.* In the Panch Mahals district twelve years' possession in all cases before the introduction of the British rule should be considered sufficient to confer a prescriptive right to land not entered as alienated and allowed for in exchange of territory between the British Government and the Scindia (G. R, No 5831 dated 26th November 1870).

*G. 3.* In deciding whether any vacant area used for stacking grass in the village—site should be assessed or not, the criterion is whether the occupant has held the site or space for a time anterior to British rule or whether he has appropriated it in recent years. In the former case the land will be exempt from assessment. In the latter case it should be assessed (G. R. 3476 dated 2nd June 1900).

*G. 4.* **Assessment to be made according to the rules in force.**—The Collector can assess lands which at the time of the announcement of the survey rates were appropriated to purposes other than agriculture and the assessment must be made in accordance with the rules in force at the time of making it, not in accordance with the rules, if any, in force when the appropriation took place. (G. R. R. D. No. 6513, dated 19th September 1903).

JUDICIAL DECISIONS.

*J. I.* **Effect of Sections 52 and 217:**—The effect of Section 52 is to give the Collector the discretion to fix the assessment and the effect of Section 217 is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither Section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land revenue according to survey rates (Laxman *vs* Govind, Bombay Law Reporter V. 1905, page 694).

Register of alienated lands.

**53.** A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

SUMMARY. (s. 53.)

Rules ... ... ... ... N 1
Land Alienation registers, ... N 2, G 5

Land revenue Alienation of Sanads... ... ... G 2

(a) altered ... ... ... G 3, G 8
(b) copies of ... ... ... ... G 4
(c) new... ... ... ... ... G 7
(d) not renewed ... ... ... N 3
(e) renewed ... ... ...N 3, G 1, G 6

NOTES

*N. 1.*—*Vide* rules.

*N. 2.*—A separate printed register is kept for each *taluka* in the office of the commissioner C. D. who has charge of the Alienation records for the whole Presidency except Sind. Changes are to be entered in accordance with the instructions on pages 66-69 of Mr. Anderson's manual of Revenue Accounts.

The District register referred to in G. 5 consists of all the taluka registers separately bound.

*N. 3.*—A duplicate sanad is not issued when the original one is *permanently lost or destroyed* but when the original sanad is *worn* out or has become useless, it is renewed (Vide G. 1).

*G. 1.*—When Sanads are *worn* out or have become *useless*, they should be renewed G. Rs. 1754 of 4-5-68 and 6012 of 25-10-75.

*G. 2.*—No alienation of land revenue should be made or renewed without the previous sanction of Government. The Commissioner in Sind is however authorized to renew *Seri* grants in the desert districts of Thar and Parkar. (G. Rs. 2611 dated 21st May 1878 and 8054 dated 11th October 1892.

*G. 3.*—**Alteration in existing sanads.**—Where Government waste land is given to an Inamdar in exchange for his Inam land taken up by Government, no fresh sanad is required to be issued to replace the existing one. It will be sufficient in such cases if the existing sanad is altered, care being

taken that the Inamdar's assent to the exchange is endorsed on the sanad while the alteration in the deed should be certified by the Collector's signature. (G. R. No. 7851, dated 23rd December, 1881.)

*G. 4.*—**Issue of separate sanads not necessary.**—In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees prescribed in the rules under Section 213 of the Land Revenue Code and Section 91 of the Registration Act. (G. R. No. 4180, dated 2nd June 1883.)

*G. 5.*—**Form of register of alienated lands.**—The register of alienated lands required to be kept under this section is to be prepared in the form given in Appendix F to the rules under the Code. Great care should be taken in the prepartion of the register as otherwise it will not only be valueless but dangerous. The register is to be a District Register. It should therefore be in English and when completed, printed and bound in the same manner as the cash alienation lists. It should in the first place be prepared in Vernacular for each taluka.

The alienation of each village should be entered and disposed of before the alienation of another village is taken up and the villages should be entered in alphabetical order. These lists when duly examined and approved in the Alienation Branch should be formed into one general register for the District in English. (G. R. No. 5634, dated 31st July 1883).

*G. 6.*—G. R. No. 841, dated 4th February 1887, is hereby cancelled. In cases of mere clerical errors the sanads may be cancelled and fresh sanads issued

in their stead without reference to Government by the Commissioner except in matters beyond the scope of his proper authority (G. R. No. 5549 dated 8th July 1892.)

*G. 7.*—Commissioners are authorized to grant new sanads to holders of alienated land or cash allowance when they are required for any reason. (Entry No. 10 of G. R. No. 5941, dated 26th August 1902.)

*G. 8.*—Commissioners can sanction alterations in sanads owing to alluvion and diluvion G. R. 8885-3rd October 1910 (entry 13).

Settlement of assessment with whom to be made.

[a] **54.** The settlement of the assessment of each portion of land, or survey-number, to the land-revenue, shall be made with the person who, under section 136, is primarily responsible to Government for the same. [b]

[a] As to the local modification of s. 54, see para 5 of footnote [a] on p. 1, *supra*.

[b] The paragraph repealed by Bom. IV of 1913, s. 16, is omitted.

*N 1*—The word "primarily" would be superfluous under the state of things established by the Record of Rights.

Rates for the use of water.

Bom. VII of 1879.

**55.** The Governor in Council may authorize the Collector or the officer in charge of a survey or such other officer as he deems fit to fix such rates as he may from time to time deem fit to sanction, for the use, by land holders and other persons, of water, the right to which vests in Government, [a] and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879[a]. Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land revenue.

[a—a] These words and figures were substituted for the original words by Bom. VII of 1879, s. 2.

## SUMMARY. (s. 55.)

Section-meaning of ... ... ... N 1, 2, G 5

Rules under—*Vide.*

1 water
- (1) free grant of ... ... ... G 6
- (2) from
  - (a) Bandharas ... ... ... G 1
  - (b) Kacha Pats ... ... G 2
  - (c) Tanks ... ... G 3, 7, 8, 11, 14
- (3) Penalty for taking-without permission ... ... ... ... G 20
- (4) Soil deterioration from ... ... G 10
- (5) used in Sind by land-holders ... G 4

2 water rate
- (1) maximum for each district G 9, G 18
- (2) Pumping installations exempt for 25 years ... ... ... G 16
- (3) Questions of levy &c. to be reported by Comrs. after consulting Director of L. R. ... ... G 15
- (4) Reduction of ... ... G 13, G 17
- (5) Suspension and remission of
  - (a) General ... ... G 17, G 19
  - (b) kacha pat ... ... ... G 2
  - (c) tanks ... ... G 7, G 14
- (6) Village accounts to show ... G 12

### NOTES.

*N 1.* **Meaning of.**—Section 55 is a new law authorizing the imposition, and the recovery as land-revenue, of rates for the use of water the right to which vests in Government or which has been made available by Government works. (Select Committee's report on the Revenue Code Bill.)

*N 2.* **Meaning of.**—The words "such other officer as he deems fit" were introduced to enable Government to entrust the duty of assessing water to a Canal officer or to any other special officer. (Page 199 of the Council Proceedings of 1877).

*G. 1.* **Bandharas.**—*Vide* also rules regarding fixing of water assessment on land under Bandharas given under Section 101. (G. Rs. 3172 of 23-6-74 and 3618 of 14-7-74).

*G. 2.* **Kacha Pats.**—Applications for remission on account of Kacha Pats which fail to afford water should be enquired into and complied with in seasons of draught. (G. R. 5456 of 14-10-74).

*G. 3.* **Tanks.**—The holders of Inam lands, who use water for irrigation from tanks constructed by Government are to pay water-rate unless they show that they have a right to use the water. (G. R. No. 1546, dated 26th March 1878).

*G. 4.* **Sind.**—In exercise of the powers given by Section 55 of Bombay Act V of 1879 the Governor in Council authorises the Commissioner in Sind to fix rates for the use, by landholders and others, of water the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the survey registers as rice land.

The amount of such rate shall be subject to the approval of Government, and shall, after sanction, be notified in the office of Mukhtyarkar of the Taluka in which the land on account of which the rate is levied is situated.

Any person desiring to grow rice in land not assessed as rice land shall make an application in writing to the Mukhtyarkar or other officer duly authorized to receive such application, for permission to make use of the supply of water needful for growing rice, stating if he requires it for one year only or permanently, and if any person cultivates rice in such land without such permission he shall be charged with double the rate he would other-

wise have been required to pay had he applied for and obtained permission.

All persons who now hold or may hereafter apply to take up lands assessed and recorded in the survey registers as rice lands shall as soon as possible after the publication of these rules or on application to take up such lands, be tendered a list of such rice lands then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate. (G. N. No. 4213, dated 21st July 1881, published in the B. G. G., Part I, page 396, 1881.)

*G. 5.* **Meaning of section.**—The words "Collector or the officer in charge of a survey" in this section appear superfluous and might as well have been omitted. The Governor in Council has under this section the power to authorize "such officer as he deems fit," to fix the rates, and this would appear sufficient to enable him to authorize "the Collector or the officer in charge of a survey" as well as any other officer. (G. R. No. 4437, dated 4th June 1896 R. D.)

*G. 6.* **Free grants of water:**—Free grants of water are given only in special cases and for special reasons and they should be subject to revision at fixed periods generally at the end of the current settlements but at shorter intervals if desirable.

In all cases where water is given free, the purpose should be specified and it should be used by the concessionaire only and only on his holding, the extension of which is under the control of the Revenue Officers. (G. R. No. 5762, dated 2nd August 1897, R. D.)

*G. 7.* **Water assessment on lands irrigated by tanks now abandoned.**—The intention of Government Resolution No. 34 W.T.– 419, dated 5th March 1895, is that in the case of any tank which is abandoned, only that portion of the assessment in res-

pect of the water derived from such tank is to be foregone which the circumstances of the lands affected may show to be required. This view is in no way contrary to those expressed in G. R. No. 5909, dated 10th August 1897.

*G. 8.* **Tanks.**—Lists of abandoned tanks may be prepared and placed in the hands of Assistant or Deputy Collectors, who should be required in the course of their inspections to note cases in which serious and permanent injury to cultivation is clearly due to disrepair of the tanks.

Under Section 48 the Collector can interfere to prevent the appropriation of any tank or pool to any purpose save those in view of which the area covered by it is exempted from assessment. (G. R. No. 2207, dated 25th March 1899.)

*G. 9.* **Maximum rate; Collector's power.**—Maximum rates for each district should be reported to Government for sanction. Collectors are authorized to fix actual rates in each case within the maximum prescribed by Government. (Entry No. 5 of G. R. No. 4347, dated 25th June 1902.)

*G. 10.* **Soil-deterioration.**—The importance of early detection of cases of local deterioration of soil should also be borne in mind. The subject is of vital importance not only to the well-being of the people but in the interest of the State, since the failure to reduce the demand as soon as it ceases to be payable without serious difficulty results in a weakening of the resources of the people and finally in loss of revenue. Collectors and Sub-Divisional officers are directly responsible for bringing the fact of local deterioration to the notice of Government at an early stage. (G. R. R. D. No. 5423, dated 5th August 1902).

*G. 11.* **Water rate for benefit derived from tanks** :—On all lands which receive benefit from a tank, one appropriate rate should be levied for the water supplied and those who do not pay should

not be allowed to deprive those who do of the advantage to which the latter only are entitled. (G. R. No. 5835, dated 21st August 1902, R. D.)

*G. 12.* **Water rates to be shown in village accounts.**—Water rates should be shown in Village Form No. 1 whenever they are ascertainable. (G. R. No. 8869, dated 13th December 1902.)

*G. 13.* **Power of reducing assessment.**—The powers given by G. R. R. D. No. 6946, dated 3rd October 1902 (in supercession of G. R. No. 3574 dated 24th July 1871) should be considered as cancelled. All cases in which a decrease of assessment on account of deficiency of water for irrigation, for the remainder of the period of settlement may be considered desirable, should be reported to Government for disposal through the Director of Land Records. (G. R. R. D. No. 1788, dated 7th March 1904).

*G. 14.* **Tanks** (i) Where tanks or other sources of water are abandoned as Government improvements, 'himayat' should be struck off the assessment of land under them; and it should also be struck off the assessment of land which manifestly cannot now be irrigated from tanks maintained by Government, the procedure prescribed in the penultimate sentence of paragraph 1 of Government Resolution No. 1788, dated 7th March 1904, being followed in every such case.

(ii) For land which is irrigable from tanks or other sources of water belonging to or maintained by Government, 'himayat' should be remitted if in any year the water for irrigation is not available for that land.

(iii) When rice is grown without irrigation from any source of water belonging to or maintained by Government, the general orders relating to the suspension and remission of land revenue should be applied, with the understanding that the assessment is 'akasia' and soil assessment combined.

When any crop other than rice is grown in lieu of rice in rice land, the order should be applied with the understanding that the assessment is the soil assessment alone, 'akasia' being entirely remitted. (G. R. No. 5475, dated 5th July 1905.)

*G. 15.* **Commissioners to consult D. L. R.**—The Commissioners of divisions should invariably consult the Settlement Commissioner and Director of Land Record when reporting on questions relating to the levy and renewals of water rates and to submit to Government his reports along with their own (P. W. D. 234—I dated 5th March 1906.)

*G. 16* **Pumping installations.**—In accordance with the recommendations of the Irrigation Commission, Government have directed that any person desiring to errect a mechanical pumping installation on a river or stream, should apply for permission to the Collector stating the nature and pumping and discharging capacity of the installation and the area it is expected to irrigate. The Collector should then consult the Superintending Engineer on the question whether the raising of the water is likely to affect seriously any Government supply for irrigational works lower down the river and if the answer is in the negative, should give the necessary permission. No charge should be made for the first 25 years after which the circumstances can be reviewed. If the Government irrigational supply lower down will be seriously affected, permission will have to be refused or restricted to the raising of such quantity of water as will not materially affect irrigation lower down.

G. R. 2407 of 6-3-1908.

*G. 17.* **Reduction of waterrate.**—In accordance with the orders issued in Government Resolution No. 2759, dated 15th March 1907, all the precarious tracts have been ascertained and patasthal assessment abolished in them; there will remain only places where the supply of water is more or less

assured and which will not require a wholesale abatement of the assessment, but only suspension or remission of the water assessment in years of absolute or partial failure of the water supply. The case of such places will be governed by No. 7 of the rules regarding suspension and remission, published in Government Resolution No. 5324, dated 27th May 1908. Accordingly the proposal to restore the powers withdrawn in G. R. No. 1788, dated 7th March 1904, was negatived. ( Serial No. 4 of the statement accompanying G. R. R. D. No.8046, dated 7th August 1908. )

*G. 18.* **Maximum rate in Satara.**—The maximum rate per acre for water under s. 55 is fixed at Rs. 12 in the Satara district.

( G. R. 4873-20-5-11 ).

*G. 19.* **Remissions in times of draught.**—In times of draught the Collectors can delegate their powers to Mamlatdars.

( G. R. 5295 dated 1st June 1911 entry 26 )

*G. 20.* **Penalty.** In the Nasik district Government sanctioned the levy of 10 times the ordinary waterrate as a penalty for taking water without permission.

( G. R. 4034 dated 1st May 1914. )

*G. 21.* Question regarding the levy of assessment for water taken from streams in non-precarious tracts in which patasthal assessment has been abolished.—In Government Resolution No. 2759 dated 15th March 1907 certain talukas were declared to be undoubtedly precarious and all patasthal assessment was abolished in them. Since then proposals were submitted to Government, which resulted in the total abolition of the patasthal assessment in certain other precarious tracts and partial abolition on individual streams or pats in certain areas, without any pronouncement being made whether they were precarious or not.

2. Government concur with the Commissioner, C. D., that in dealing with the application of the orders contained in Government Resolution No. 13535 dated 18th December 1915, it should be definitely decided what tracts are precarious and what tracts are non-precarious and that, though a taluka as a whole is not classed as precarious, certain groups of villages might well be classed so. It does not necessarily follow that because all patasthal has been abolished, therefore the taluka is precarious and no assessment should be levied under section 55 of the Land Revenue Code.

3. The Commissioners C. and S. Divisions' should accordingly be asked to consider those cases in which no definite pronouncement has been made and decide whether such talukas or portions of them should be classed as precarious and entitled to future exemption from assessment under sec. 55 of the Code.

4. As regards the remaining tracts classed as non-precarious the general principles promulgated in Government Resolution No. 13535 dated 18th December 1915 should be applied to them, subject to the proviso that assessment under section 55 of the Land Revenue Code may be imposed in cases which ordinarily fall under the rule of exemption, should it appear to a revenue officer not lower in rank than a sub-divisional officer, on personal investigation, that assessment ought to be imposed in view of plentiful and constant supply of water utilized at small cost compared with the advantage gained.

R. D. 4967 dated 20th April 1917.

**56.** Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy [a] or alienated holding together with

Land revenue to be a paramount charge on the land.

all rights of the occupant [a] or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy [a] or alienated holding, [b] or may otherwise dispose of such occupancy [a] or alienated holding under rules [c] made in this behalf under section 214, [d] and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding.[d]

[a] As to the local modification of the words "occupancy" and "occupant," see para. 5 of foot-note [a] on p. 1, *supra*.

[b] Words repealed by Bom. VI of 1901, s. 6, are omitted.

[c] Words repealed by Bom. IV of 1913, ss. 17 and 18, are omitted.

[d—d] These words were added by Bom. VI of 1901, s. 6.

## SUMMARY ( Sec. 56 )


Section-History ... ... ... N 1, N 2
Meaning N 3 to N 5, N8/G 3, G 9, G 10/J 2
Rules ... ... ... ... ... N 6
Alienated villiage... ... ... ... N 7
Defaulters-consequences of being ... G 5
Forfeited holding :—
(1) When-ceases to be a ... ... J 1
(2) When given on new tenure G 7, J 2
(3) When sold... ... ... ... G 6
(4) When not sold ... ... G 2, G 11

Forfeiture:—

| | |
|---|---|
| (1) explained ... ... ... | G 8, J 2 |
| (2) not affected by payment or security ... ... ... | G 4, G 11 |
| (3) when begins ... ... | G 1, G 11 |
| (4) when not desirable ... ... | G 5 |
| Irrigation waterrate—s. 56 does not apply to ... ... ... ... | G 10 |
| Land-occupancy—when to be given to paupers ... ... ... ... | G 5 |
| Tagai under Agriculturists' Loans Act. s. 56 does not apply to ... | G 9 |

NOTES.

*N. 1.*—**Section, history and meaning.**—In the original draft bill No. I of 1875, there was section 129 which partially corresponded with s. 56. The provisions of draft s. 129 were in fact simply a declaration of what was held by the High Court to be the then existing law :—

5 B. H. C. R. 49
10 „ 416
„ 419
11 „ 97
Regulation 4 of 1827 s. 69 (2)
„ 17 „ „ s. 5 (3)
„ 19 „ „ ss., 3 and 4

*N. 2.* The Select Committee modified and split up draft section 129 into two (121B and 121 C). Of these, section 121B corresponded with the original section 56 and was finally passed in 1879.

The original section stood as follows :—

"56. Arrears of land revenue due on account of 'land by any landholder shall be a paramount 'charge on the holding and every part thereof, 'failure in payment of which shall make the occu-'pancy or alienated holding together with all 'rights of the occupant or holder over all trees, 'crops, buildings and things attached to the land,

'or permanently fastened to anything attached to 'the land, liable to forfeiture whereupon the collec- 'tor may levy all sums in arrear by sale of the oc- 'cupancy or alienated holding, (A) freed from all 'tenures, incumbrances and rights created by the 'occupant or holder or any of his predecessors in 'title, or in any wise subsisting as against such oc- 'cupant or holder (A) or may otherwise dispose of 'such occupancy or alienated holding under rules 'or orders made in this behalf under s. 214."

*N. 3.* Section 6 of Bombay Act VI of 1901 amended this section as follows :—

(1) the words between A—A marked above were repealed, and at the end

(2) the words between d—d in the present section were added.

*N. 4.* The objects of the amendment in 1901 were as follows :—

(a) Freedom after forfeiture from incumbrances and rights created by the holder can now be held applicable not only to disposal by (1) *sale* but to *all* other disposals viz.

(2) restoration to the defaulter
(3) transfer to another person
(4) entry of the forfeited land as Govt. waste &c. &c.

NOTE.—When sale is held *before* adopting the disposal (4), the surplus is to be paid to the defaulter under Sect. 183. If the sale is held after entering the forfeited land as waste, Sect. 183 does not apply and the surplus after sale will go to Government.

(b) The words, 'unless the Collector otherwise directs' provided a safeguard (in addition to a notice of intended forfeiture referred to in the proviso to Sec. 153) against

fraud on the part of a holder against his mortgagee &c.

(c) Incumbrances (such as an arrear of Takavi under Act 19 of 1883) in favour of Govt. could not be extinguished by the forfeiture.

NOTE.—Takavi arrears due to Govt. under Act 19 of 1883 cannot be extinguished by forfeiture of the land, for the improvement of which Takavi was granted. They have therefore always to be recovered from the sale proceeds of the land. If the sale takes place immediately after forfeiture, the surplus goes to the defaulter under Sec. 183. But if the forfeited land is first entered as Govt. waste under disposal (4) in (a) above, the surplus will also go to Govt. as the defaulter's right to the surplus under Sec. 183 is extinguished by this disposal.

*N. 5.* Bombay Act 4 of 1913 Sec. 17 repealed the words "or orders" after the word "rules."

*N. 6.* Rules (vide.....)

*N. 7.* Alienated village &c. Arrears of land revenue in respect of an alienated village, or a share thereof (if not recovered by any process except forfeiture), are dealt with under Secs. 159 to163.

*N. 8.*—**'Holding'** The word 'holding' in this section means a '*Khata*' or ledger entered in the name of the defaulter in the village accounts. It is impossible to assign an arrear of land revenue to one particular piece of land or building site entered in the 'Khata.'

## GOVERNMENT RESOLUTIONS.

*G. 1.* **Failure in payment of land-revenue.**—Failure in payment of land-revenue makes the occupancy liable to forfeiture. The Collector is empowered to declare the occupancy forfeited at any time after the arrear is due. Forfeiture takes place when the Collector declares it. He can declare it at the end of the period named in the notice. (G. R. No. 4000, dated 31st July 1879.)

*G. 2.* **Forefeited occupancy need not necessarily be sold.**—It is not obligatory on the Collector under the Code to sell a forfeited occupancy in realization of arrears. He may either sell it or otherwise dispose of it. (G. R. No. 5730, dated 27th October 1879.)

*G. 3.* **Effect of Sections 56, 57 & 153 on Defaulter's holding or occupancy.**—In the following paragraphs is concisely stated what the law of the Code regarding defaulter's holding is.—

Section 56 declares such holding liable to forfeiture;

Section 153 says that when default is made, the Collector may declare the occupancy or alienated holding to be forfeited to Government;

When forfeiture has been thus effected, Section 57 empowers the Collector to take immediate possession of the land;

Sections 56 and 153 next authorize the Collector to sell the holding (occupancy or alienated holding) or otherwise dispose of it under rules or orders made in this behalf by Government under Section 214 (*e*);

If the forfeited holding (occupancy or alienated holding) is sold, the proceeds must be credited to the defaulters' accounts (Section 153), and the surplus, if any, over and above the expenses of the sale and the amount of the arrears must be paid to him (Section 183);

If the foreited holding is not sold it remains, nevertheless, forfeited and can be disposed of either at once or at any subsequent time in such manner as the Collector, subject to the rules or orders of Government, thinks fit;

Section 57 empowers the Collector to place the purchaser or other person entitled to hold the forfeited holding in possession;

If a forfeited holding (occupancy or alienated holding) is not put up for sale, or if it is put up

for sale and is not sold, so that it yields no proceeds, the arrear due by the defaulter is still recoverable by any of the means allowed by Chapter XI. In every case of default of payment of arrears of land revenue the holding should be forfeited. (G. R. No. 3796, dated 21st July 1880.)

*G. 4.* **Giving of security not to affect forfeiture**—Although proceedings could be stayed under Sections 164 and 169, if security were given or the arrears paid, the forfeiture would not thereby be cancelled. The holding of a defaulter cannot be sold unless it is first declared forfeited (G. R. 4891 dated 16 September 1880).

*G. 5.* **Grant of occupancy of land to pauper cultivators.**—It is not expedient or desirable to issue any order prohibiting absolutely the grant of the occupancy of land to pauper cultivators. In allowing land to be taken up for cultivation by persons who possess little or no capital the Collectors must exercise their discretion on consideration of the varying circumstances of different districts. In Collectorates inhabited in parts by hillmen and tribes whom it is desired to wean from their wild life and induce to take to cultivation and a more settled mode of existence, it would be obviously impolitic to refuse land to applicants merely because they were destitute of capital.

With reference to the question of the grant of remission or the temporary suspension of the collection of arrears of land-revenue when a Collector finds that there are special exceptional circumstances whether of season or otherwise in any year which prevent for the time being the punctual payment of the land assessment by the rayats, and that more liberal remissions and relief than he is authorized to grant are required, he should report the facts of the case to Government for orders in place of having immediate resort to the sale of the holdings and the distraint of the property of the defaulting cultivators.

Those who have been once defaulters should not be again allowed to take up land without the special orders of the Collector. If the penalty of becoming a defaulter is absolute disqualification from again holding land under Government, the effect may be beneficial. (G. R. No. 4297, dated 25th July 1881.)

*G. 6.*—**Sale of forfeited holding or occupancy.**—When a sale of an occupancy or alienated holding is made under Sections 56 and 57, the property is sold as the property of Government by reason of forfeiture, and not as the property of the defaulter. A forfeited land can be sold as unoccupied unalienated land subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land, so far as they are consistent with the provisions of Chapter XI of the Code. The proclamation for the sale of unoccupied Governmet waste land should be used for the sale of forfeited holdings. (G. R. No. 6455, dated 29th October 1881).

*G. 7.*—**Sale of forfeited lands on restricted —tenure:**—It will be seen (from G. R. No. 8698, dated 15th December 1901, circulated with G. R. No. 9183, dated 29th December 1902) that there is nothing to prevent the Collectors from disposing of lands on restricted tenure by public auction when there are several applicants for the same land. (G. R. No. 9915, dated 19th October 1906, R. D.)

*G. 8.*—**Forfeiture explained.**—The ordinary Legal signification must be given to the word 'forfeiture' in S. 56. The High Court has overruled the contrary decisions in I.L.R. 22 Bombay 389 and 24 Bombay 34. (G. R. 2615 dated 12th March 1907.)

*G. 9.*—**Tagai under Agriculturists' loans Act.**—sections 56 and 153 do not apply to recovery of loans under the Agriculturists' loans Act. Such loans are to be recovered from the persons to whom they are made and not out of the land (G. R. 9109 dated 7th October 1910).

*G. 10.*—**Irrigation water rates**—Section 56 does not apply to water rates leviable under the Bombay Irrigation Act 1879. These rates are not land-revenue as they are due for water only.

(G. R. 4837 dated 19th May 1911).

*G. 11.*—Under sections 56 and 153 a forfeited occupancy lies fully at the disposal of the collector from the date of the order of forfeiture. The collector is fully competent to grant the land to anyone he pleases after the forfeiture. Payment of dues after the order of forfeiture does not in the least affect that order (G. R. 1013 dated 22nd October 1912).

## JUDICIAL DECISIONS.

*J. 1.* The rules under the Land Revenue Code empower a Collector to restore a forfeited occupancy to the original occupant. But when a forfeited occupancy has been disposed of by grant to a new occupant it ceases to be a forfeited occupancy and the rule has no longer any application (I. L. R. 36 Bombay 91).

*J. 2.* In 1995 defendants nos. 1 and 2 mortgaged their lands to the plaintiff, one of the conditions of the mortgage being that the mortgagors were to remain in possession of the land and to pay the Government assessment. Default having occurred in payment of assessment, the Collector demanded payment first from mortgagors and then from the mortgagee. As nobody paid the assessment the Collector eventually forfeited the land in 1902; but shortly afterwards regranted it to defendants 1 and 2 on the new tenure. The mortgagee (plaintiff) next obtained a decree on his mortgage and in execution of it attached the land. The attachment was however raised by the Revenue Authorities under sec. 70 of the Code. The plaintiff sued for a declaration that the land was liable to be attached and sold in execution of his decree.

Held that the land was, under sec. 56 of the Bombay Land Revenue Code vested in defendants 1 and 2 free from the incumbrance which had been created and from the equities theretofore existing between them and the plaintiff (I. L. R. 37 Bombay 692).

Forfeited holdings may be taken possession of and otherwise disposed.

**57.** It shall be lawful for the Collector in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of [a] such holding, and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

[a] This was substituted by Bom. I. of 1910, 1st Sch., part II Serial No. 3, for the original section.

*N. 1 Vide* G 2 under s. 56.

Receipts.

[a]**58.** (*1*) Every Revenue-officer and every hereditary patel and every hereditary village-accountant receiving payment of land-revenue shall give a written receipt for the same.

(*2*) Every superior holder of an alienated village or of an alienated share of a village who is entitled to recover direct from an inferior holder any sum due on account of rent or land-revenue shall give to such inferior holder a written receipt for the same.

(3) Every hereditary patel and hereditary accountant who receives, in behalf of a superior holder of an alienated village or of an alienated share of a village, any rent or land-revenue from an inferior holder shall give to such inferior

holder a written receipt for the same. Such receipt shall be a full discharge to such inferior holder for such rent or land-revenne as against such superior holder. A copy of such receipt shall in every case be sent to the superior holder by such patel or accountant.

[a] This was substituted by Bom. 1 of 1910, 1st Sch., Part II, serial No. 3, for the original section.

*N. 1* *Vide* orders under s. 85.

*G. 1.* **Responsibility of accepting revenue.**—The revenue should be paid to the Patil in the presence of the Kulkarni and when the former is absent, the kulkarni might receive it. (G. R. No. 3845, dated 19th May 1883.)

*G. 2.* **Receipts exempt from stamp duty.**—Every receipt given under Section 58, is exempt from stamp duty; but receipts given not only by Dumaldars but also by any Inamdar to the Village officers for sums paid by such officers to the Dumaldar or Inamdar on account of Land Revenue Collections must be stamped when the sum in respect of which the receipt is given exceeds Rs. 20. (G. R. R. D. No. 2641, dated 27th March 1884.)

*G. 3.* **Village accountant bound to give receipt.**—The village accountant receiving a payment of land-revenue is bound to tender a receipt for the same in some form, and if a receipt book is not produced by a rayat, the accountant has no choice but to prepare and tender it to the rayat on a separate paper. (G. R. No. 3661, dated 7th May 1884.)

*G. 4.* **Land-revenue paid in kind.**—Where the practice is of making payments in kind they should be entered in receipt books according to local measures. (G. R. No. 259, dated 12th January 1885).

*G. 5.* Government Resolution No. 5915 dated 15th June 1908, R. D. sanctioned a new form of receipt which is a counterfoil of the daybook (village form IX).

As the details of land etc. cannot be entered in the counterfoil receipt, ryots have a right to

(a) inspect village forms viii-A and viii-B

(b) have a copy of viii-A or viii-B on payment of one anna each, and

(c) to have the copy of viii-A corrected from time to time free of charge. (paragraphs 14 to 16 on page 113 of Mr. Anderson's Manual).

Penalty for failure to grant receipts.

**59.** Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

## CHAPTER VI.

### OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND. [a]

Written permission of Mámlatdár or Mahálkari required previous to taking up unoccupied land

[b]**60.** Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mámlatdar or Mahálkari.

[a] This heading was substituted by Bom. IV of 1913, s. 19, for the original heading which was as follows:—

Of the occupation of unalienated land and the rights of occupants.

[b] As to the local repeal of s. 60, see para. 5 of foot-note [a] on page 1, *supra*.